

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5555**

**PETITION OF BARBARA RAPPEPORT**

(Hearing held October 10, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, November 8, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(c), 59-C-1.326(a)(4), and 59-C-1.326(a)(2)(A). The existing 8-foot fence requires variances of: 4.80 foot variance as it is within .20 feet of the side lot line; 40.80 feet as it is within .20 of the rear lot line; and 59.80 feet as it is within .20 of the front lot line. The required side lot line setback is five (5) feet, the required rear lot line setback is forty-one (41) feet, and the required front lot line setback is sixty (60) feet.

The subject property is Lot 24, Block A, Alta Vista Knoll Subdivision, located at 5619 Alta Vista Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 20049281).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner seeks a variance for the existing 8-foot fence. The petitioner testified that the existing "higher than normal" fence, along the rear yard boundary, was constructed in or about October, 2000. (Transcript of Testimony (T) at 5, 17).
2. The petitioner testified that the volume of plant material on her neighbors' property along the shared rear lot line is unusual (Id. at 7), and that the additional height she seeks for the 8-foot fence, is required in order to prevent the plantings on the adjacent neighbor's property from encroaching on her yard. (Id. at 5). The petitioner testified that in the absence of the additional fence height, the effort required to keep the plant material under control constitutes a hardship. (Id. at 7-8, 22).
3. The petitioner testified that because of the position of her house on the lot, the rear yard is narrow. (Id. at 20).
4. Laura Magnuson, Esquire, appeared at the public hearing on behalf of Marie and Robert Magnuson, the adjacent property owners on Lot 23. Ms. Magnuson stated that her clients and the petitioner had entered into an agreement with respect to the landscaping and fencing along their shared property line (T at 3). and that her clients had no objection to the fence in its existing configuration. (Id. at 9, 27).

## **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

1. The Board finds that the petitioner's lot is not unique and has no exceptional topographical or extraordinary conditions that are peculiar or unique to the property. The Board finds that the petitioner's property is consistent in shape and size with the neighboring lots on the same side of the street as shown on Exhibit No. 12.
2. The Board finds that 'the unique' aspect of a variance requirement does not refer to the extent of improvements upon the property. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).
3. The Board further finds that the Zoning Ordinance does not grant the Board the authority to determine issues related to plant materials on the adjacent property.

Since the petition does not meet the requirements of Section 59-G-1.3(a), the Board finds that it does not need to consider the other requirements for granting a variance. Accordingly, the requested variances of: 4.80 feet from the required five (5) foot side lot line setback; 40.80 feet from the required forty-one (41) foot rear lot line setback; and 59.80 feet from the required sixty (60) foot front lot line setback for the construction of an 8-foot fence are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Angelo M. Caputo and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the foregoing Resolution. Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution.

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Donna L. Barron  
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 8th day of November, 2001.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.